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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition for Extension of the)
Compliance Date under Section 107)
of the Communications Assistance)
for Law Enforcement Act)
)
Communications Assistance)
for Law Enforcement Act) CC Docket No. 97-213

ICG TELECOM GROUP, INC.
PETITION FOR EXTENSION
AND
COMMENTS

ICG Telecom Group, Inc. ("ICG"), by its undersigned counsel, pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. §§ 1001 et seq., hereby requests a two-year extension of CALEA's October 25, 1998 compliance deadline on the grounds that it is impossible to comply with the statute within the compliance period because CALEA-compliant equipment will not be available within that period. ICG hereby also submits this request in response to the Commission's April 20, 1998 Public Notice requesting comments on whether and how to grant extensions of CALEA's October 25, 1998 compliance deadline.

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I. ICG IS ELIGIBLE FOR A TWO-YEAR EXTENSION

ICG, headquartered in Englewood, Colorado, is a competitive local exchange carrier (“CLEC”), with operations in the Western, Midwestern and Southeastern regions of the United States. Like other telecommunications carriers,¹ ICG is subject to CALEA’s wiretapping capability requirements² which, among other things, require carriers to ensure that law enforcement can perform certain electronic surveillance functions by October 25, 1998. Pursuant to Section 107(c) of CALEA, ICG may petition the Commission for an extension of the CALEA compliance deadline for equipment, facilities and services installed or deployed after January 1, 1995. A significant portion of ICG’s existing network was installed or deployed after January 1, 1995. Moreover, ICG will continue to expand its network with new equipment, facilities and services.

CALEA provides that the Commission may grant an extension where “compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period.” 47 U.S.C. § 1006 (c)(2). As discussed below, because CALEA-compliant equipment is not available for purchase by carriers, ICG will not be able to comply with CALEA’s capability requirements by the October 25, 1998 deadline.

¹ ICG is a “telecommunications carrier” as that term is defined in Section 102 (8)(A) of CALEA. A “telecommunications carrier” includes “a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire. . . .” 47 U.S.C. § 1001(8)(A).

² CALEA’s capability requirements direct carriers to ensure that their equipment can enable the government unobtrusively to: intercept wire and electronic communications; collect caller identification information; and deliver interceptions and caller identification to the government. 47 U.S.C. § 1002.

II. The Lack of CALEA-Compliant Equipment Prevents ICG from Meeting CALEA's Requirements by the Statutory Deadline

As a threshold matter, ICG strongly supports the efforts of law enforcement agencies to apprehend criminals and to reduce criminal activity. Further, ICG recognizes the critical role that telecommunications carriers play in facilitating electronic surveillance, particularly in the face of rapid changes in technology that may render traditional wiretapping techniques ineffective. Electronic surveillance in the digital era creates complex issues for both law enforcement agencies who perform wiretaps and carriers who facilitate those taps. ICG, like many other carriers aware of their CALEA obligations, continues to struggle with the myriad complicated technical and implementation issues involved in making significant new changes in the network.

As is evident from the filings now pending before the Commission, the Attorney General and the industry have not been able to reach agreement regarding what capabilities must be provided to meet CALEA's requirements. Although the industry adopted a technical standard ("J-STD-025") to guide manufacturers in developing new CALEA functionality in telecommunications equipment that standard has been challenged by the Attorney General in her March 27, 1998 deficiency petition. Moreover, while the Attorney general has argued that the industry standard falls short of what is required by law, the Center for Democracy and Technology has filed a petition arguing that the industry standard goes too far in providing wiretapping capabilities to law enforcement, and thus infringes on individual privacy interests.³

³ See *Communications Assistance for Law Enforcement Act*, Center for Democracy and Technology Petition for Rulemaking under Sections 107 and 109 of the Communications Assistance for Law Enforcement Act, Before the Federal Communications Commission, March 26, 1998.

Substantial uncertainty over technical standards persists, despite the fact that the industry has worked closely with the FBI to reach a mutually acceptable view of what capabilities are required for compliance with CALEA, and individual carriers and manufacturers have already devoted enormous financial, technical and personnel resources to meeting their CALEA obligations.

Apparently, the absence of settled standards has caused (and continues to cause) enormous uncertainty thereby making it impossible for manufacturers to produce equipment, and carriers to purchase such equipment, that meets CALEA's requirements. Indeed, ICG's primary vendor, Lucent Technologies Inc., has already filed an extension petition on these grounds. CALEA anticipates potential compliance difficulties, such as a lack of available equipment, and thus provides that the Commission may grant an extension if it determines that compliance with the capability requirements is "not reasonably achievable through application of technology available within the compliance period." 47 U.S.C. § 1006 (c)(2). ICG has found that compliance with CALEA's capability requirements is not "reasonably achievable" pursuant to the statute. In fact, compliance is not achievable at all, by the use of existing technology. Equipment built to CALEA specifications is not currently available. Further, ICG understands that, given typical time frames of at least 24 months for developing new equipment, it is not likely that CALEA-compliant equipment will be available by October 25, 1998.⁴ A grant of a two-year extension is therefore clearly justified.

⁴ The Commission and the Federal Bureau of Investigation ("FBI"), acting for the Attorney General, have recognized that development of new equipment ordinarily requires 24 months after adoption of a standard. See *Petition for Extension of Compliance Date under Section 107 of the Communications Assistance for Law Enforcement Act* by AT&T Wireless Services, Inc., Lucent Technologies Inc., and Ericsson Inc., Before the Federal Communications Commission, March 30, 1998 at 4.

III. The Commission Should Extend the Compliance Date for ICG and Other Similarly Situated Carriers

The Commission has requested comment on how it can quickly and efficiently extend the compliance date, if warranted, for large numbers of similarly-situated carriers. Although ICG is hereby individually seeking a two-year extension, it strongly supports procedures that would offer some measure of administrative convenience to the Commission while reducing the uncertainty and unnecessary expense for the industry in achieving compliance with CALEA. ICG therefore recommends that the Commission issue an order granting an industry-wide extension of the October 25, 1998 compliance date. No regulatory or public interest purpose would be served by requiring carriers and their vendors to submit individual petitions given that the central issue in each petition is likely to be the same: it is not possible to comply with CALEA in the near term because CALEA-compliant equipment is not commercially available. Scarce Commission and industry resources would be better spent on resolving the difficult legal and technical issues raised in implementing CALEA.⁵

⁵ If the Commission declines to grant a blanket extension, it should avoid unnecessarily burdensome requirements and accept pro forma requests for extensions. These requests would entitle a carrier to a two-year extension upon filing a statement that it is a carrier within the meaning of CALEA subject to the October 25, 1998 deadline, and that compliance is not reasonably achievable within the compliance period. In the event that the Commission does provide for such routine requests or adopts other new procedural requirements for handling CALEA extensions, ICG requests that this Petition be deemed to satisfy any such requirements.

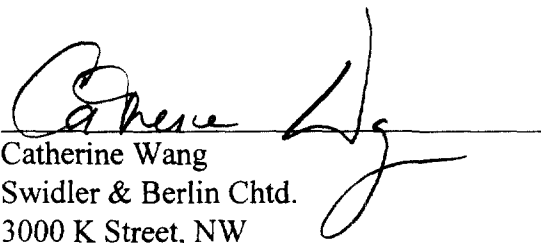
IV. Conclusion

The simple fact that it is impossible for ICG to comply with CALEA because the appropriate equipment is not commercially available dictates that the Commission should grant an extension of two years. The Commission further should grant a blanket extension for all similarly situated carriers.

Respectfully submitted,

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